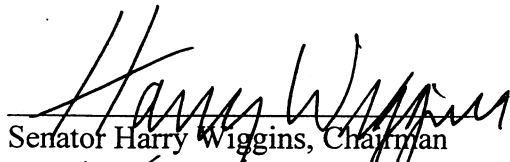


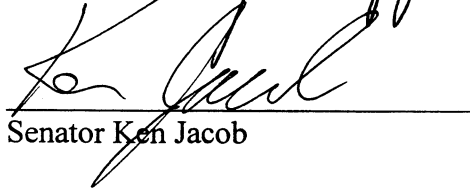
**Report of the  
Joint Interim Committee  
on Asset Forfeiture**

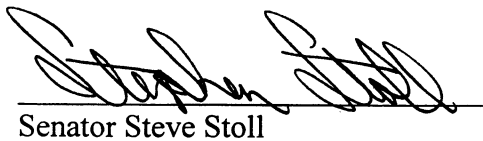
**January, 2000**

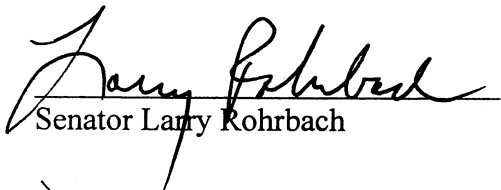
TO THE PRESIDENT PRO TEMPORE  
OF THE SENATE  
AND THE SPEAKER  
OF THE  
HOUSE OF REPRESENTATIVES  
OF THE NINETIETH GENERAL ASSEMBLY  
OF THE STATE OF MISSOURI

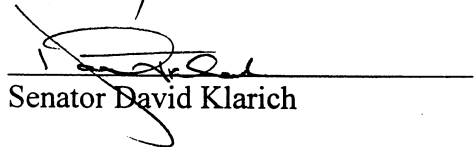
Your Joint Interim Committee on Asset Forfeiture begs leave  
to submit the following report:

  
Senator Harry Wiggins, Chairman

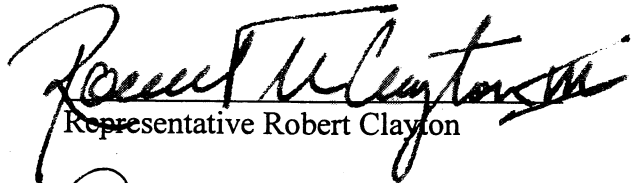
  
Senator Ken Jacob

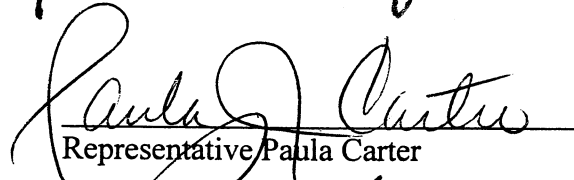
  
Senator Steve Stoll

  
Senator Larry Rohrbach

  
Senator David Klarich

  
Representative Jim Kreider, Chairman

  
Representative Robert Clayton

  
Representative Paula Carter

  
Representative Patrick Naeger

REPORT OF THE  
JOINT INTERIM COMMITTEE  
ON  
ASSET FORFEITURE

COMMITTEE MEMBERS

Senator Harry Wiggins, Chairman  
Senator Ken Jacob  
Senator Steve Stoll  
Senator Larry Rohrbach  
Senator David Klarich

Representative Jim Kreider, Chairman  
Representative Robert Clayton  
Representative Paula Carter  
Representative Patrick Naeger

STAFF

Joan Gummels, Senate Research  
Sarah Madden, House Research

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## **I. INTRODUCTION**

We respectfully submit to you the Report of the Joint Interim Committee on Asset Forfeiture. On August 26, 1999, the President Pro Tem of the Senate, Senator Edward E. Quick, and the Speaker of the House, Representative Steve Gaw, established the Committee and instructed it to study the issues of asset forfeiture in Missouri and the interaction of relevant constitutional provisions and state and federal statutes.

The Committee held public hearings on 4 days from throughout the last four months of 1999. The hearings took place on September 28 and December 15 in Jefferson City, October 12 in St. Louis and November 2 in Springfield. A total of 23 individuals testified before the Committee and several submitted written materials in addition to oral testimony (see Appendix A). The Committee also met in Jefferson City on January 10, 2000, to consider the final report.

## **II. ISSUES PRESENTED**

Article IX, section 7 of the Missouri constitution mandates that the "proceeds of all...forfeitures...collected hereafter for any breach of the penal laws of the state...and all other moneys coming into said funds shall be distributed annually to the schools of the several counties according to law." (see Appendix B.) Federal law, however, allows federal agencies to share the proceeds of forfeitures with state and local law enforcement that participate in a federal seizure, by receiving the majority of the value of the property seized. Missouri's equitable sharing payments from the Department of Justice Asset Forfeiture Fund report, as well as from the Department of the Treasury Forfeiture Fund report, from 1993 to 1999, are listed in Appendix E.

Federal and state laws also differ on the applicability of forfeiture laws. The Criminal Activity Forfeiture Act (hereinafter "CAFA") requires that the money be "used or intended for use in the course of, derived from, or realized through criminal activity". §513.607 (see Appendix B). Some Missouri appellate courts have ruled that this requires a criminal conviction. Federal laws take the contrary approach, and place the burden on the person claiming ownership of the property to prove that they are not involved in criminal activity. Therefore, when a large amount of money is found on a suspect, but no evidence of criminal activity is witnessed by the officers, they feel constrained by state law to release the money to the suspects, whereas federal law would authorize seizure of the money.

Law enforcement testimony indicates that the procedure outlined in CAFA is confusing, since it does not specify or define the moment when a "seizure" occurs. They also point to conflicts between other provisions of state law governing disposition of abandoned or unclaimed property, which specify different procedures that direct the resulting proceeds to either the state or county treasury.

As a result of the above factors, testimony presented demonstrated that law enforcement may contact federal officers to complete a seizure even when the property is initially discovered or controlled by state or local law enforcement, particularly when large amounts of unclaimed money are involved. In doing so, state or local law enforcement may receive the benefits of

federal law. The stated motivation for these actions involved both a desire to stop individuals assumed to be breaking the law from profiting from their suspected actions, as well as a way to provide some financial benefit to the law enforcement agency. Testimony indicated that some local law enforcement budgets were strained, and the proceeds had been used to promote anti-drug programs.

In response, other parties assert that the intent of the constitutional restriction and the statutory requirement of ongoing criminal activity was to avoid giving law enforcement an "incentive" for unwarranted seizures, and also to provide greater protection for citizens against unwarranted seizures of private property. For example, they argue that the possession of large amounts cash should not give rise to seizure of the property without proof of criminal activity, as ownership of money does not constitute a crime. Representatives of educational institutions testified that they experienced similar, or even greater, budgetary constraints as those experienced by local law enforcement. In addition, some witnesses asserted that the law is not confusing since the term "seizure" is commonly understood and CAFA specifically contains provisions relating to unclaimed property.

CAFA currently requires state and local law enforcement agencies participating in the federal forfeiture system to acquire an independent audit, and to forward the audit to their respective governing body and to the state auditor. (See Appendix B, section 513.653.) Testimony presented showed that compliance with this law has been sporadic, possibly because the law does not contain a penalty provision.

While the Committee sympathizes with both the budgetary concerns presented by law enforcement and educational representatives, the Committee's overriding concern is the apparent neglect of the state constitutional mandate: Article IX, section 7, requires that the proceeds of all forfeitures shall be distributed annually to schools, according to law. The failure to follow this clear directive has created an environment in which the credibility of law enforcement is questioned. Moreover, in bypassing the required judicial approval to transfer the property to the federal system, it is possible that schools in the state, and ultimately taxpayers, are being deprived of the proceeds from some of these forfeitures. Consequently, the Committee's recommendations constitute an attempt to clarify the requirements of the law to eliminate existing conflicts and confusion, in order to achieve compliance with our state constitution.

## **RECOMMENDATIONS**

1) Define the term "seizure" for the purposes of CAFA as "the point at which any law enforcement officer or agent discovers and exercises any control, including detaining anyone found in possession of the property from leaving the scene of the investigation without the property, over property that an officer or agent has reason to believe was used or intended for use in the course of, derived from, or realized through criminal activity."

The term "seizure" is utilized throughout the act, though no definition is included. The absence of a definition results in the possibility of law enforcement calling in federal agents to actually

physically take the money, in the belief that this complies with state law. At its worst, such behavior has been characterized as a "game" by a federal judge in Kansas City on February 5, 1999, in a ruling that refused to allow the federal agents to "take money" that local officers actually seized. The recommended revision would mean that any interference with possession of the property, whether it is characterized as "holding" the property or taking full custody and control of the item in question, constitutes a seizure for the purposes of Missouri law.

2) Define the term "seizing agency" as the agency which is the primary employer of the officer or agent seizing the property.

In combination with the first recommendation, this serves to clarify that the local or state official discovering and detaining the property shall apply the provisions of state law. It voids the argument that any individual officer of a local agency is holding the property on behalf of the federal government.

3) Reconcile conflicting provisions governing abandoned or unclaimed property. This can be achieved by specifying in other provisions that "any property, including cash or other negotiable instruments, that is seized because an officer or agent has reason to believe was used or intended for use in the course of, derived from, or realized through criminal activity, shall be subject to the provisions of the criminal activity forfeiture act pursuant to sections 513.600 to 516.645, RSMo."

The provisions that should be amended are section 542.301, regarding disposition of unclaimed seized property (see Appendix D), and one of the sections in the Uniform Disposition of Unclaimed Property Act, sections 447.030 to 447.595, RSMo (see Appendix C). A recent court decision stressed that no legitimate distinction between illegal proceeds and other property exists for forfeiture purposes. State v. Eicholz, 999 S.W.2d 738, 743 (Mo. App. W.D. 1999). The recommended clarification would eliminate the confusion regarding the various provisions of state law, and ensure compliance with the constitutional directive that proceeds from criminal forfeitures benefit the school system.

4) Require that prosecuting attorneys file an annual report with the state auditor. Section 513.607 currently requires law enforcement to report all seizures to the prosecuting attorney or the Attorney General. This provision can be amended to require a copy of any reports to be sent to the Auditor. The report should include, at a minimum, the identity of any property seized pursuant to CAFA, the value of the property, the date of the seizure and of all judicial determinations regarding the property including transfers to federal authorities, the identity of the circuit court and judge involved in any ruling concerning the property, and the disposition of the property.

5) Require all state and local agencies participating in any seizure to file a report with the state auditor, the contents and timing of which shall be specified. The auditor shall issue an annual report to the General Assembly, compiling the data.

Again, section 513.607 requires local law enforcement to report all seizures to a prosecuting attorney; the prosecuting attorney is in turn required to file an annual report with the Department of Public Safety. This provision would be amended to require the annual report to also be filed with the Auditor, in order to verify compliance and the accuracy of information. Furthermore, the General Assembly should obtain the advice of the state auditor as to the type of information needed to properly assess compliance with the constitution and state laws.

6) Develop a penalty provision for noncompliance with reporting requirements, either civil or criminal. Although both sections 513.607 and 513.653 currently direct law enforcement agencies or prosecuting attorneys to file reports, no mechanism for enforcement exists in cases of noncompliance. The Committee recognizes that the reasons for noncompliance may range from being a simple oversight to an intentional disregard of the statutory reporting requirements. Any penalty provision should be fashioned to take either circumstance into account.

7) Require circuit court judicial review for disposition of any property obtained pursuant to a seizure involving any state or local law enforcement officers or personnel, regardless of the initiating or seizing agency. This provision would require that Missouri retain jurisdiction over any property seized in the state, and that federal agents obtain judicial review in a Missouri court before the property could be transferred to federal authorities. Mandating a court hearing in every case eliminates the advantage of a federal forfeiture to bypass a court determination, thereby eliminating one incentive to contact federal authorities when property is discovered.



**APPENDIX A**  
**WITNESS LIST**

**Jefferson City - September 28, 1999**

Colonel Weldon Wilhoit  
Missouri State Highway Patrol

Colonel James Wakeman  
Missouri National Guard

James Klahr  
Office of the Missouri Attorney General

Randy Scherr  
Missouri Association of Criminal Defense Attorneys

Darrell Moore  
Office of the Greene County Prosecuting Attorney

Chris Straub  
Missouri Association of School Administrators

**St. Louis - October 12, 1999**

Claire McCaskill  
Office of the Missouri State Auditor

Ronald Henderson  
Chief of Police, City of St. Louis

David Glaser  
Cooperating School Districts of Greater St. Louis  
(Chief Financial Officer for Rockwood School District)

Paul D'Agrosa  
Attorney, St. Louis

John Simon  
Attorney, Jefferson City; Missouri Association of Criminal Defense Attorneys

Troy Cardona

Office of the Jefferson County Prosecuting Attorney

Larry Fleming  
Federal Public Defender

**Springfield - November 2, 1999**

Dr. Terry Reid  
Superintendent, Nixa R-II School District

Sheriff Steve Whitney  
Christian County Sheriff's Department

Dee Wampler  
Attorney, Springfield

Susan Spence  
Office of the Christian County Prosecuting Attorney

Lieutenant Don Clark  
Springfield Police Department

Joy Jones  
C.O.M.E.T.

Robert George  
Office of the Lawrence County Prosecuting Attorney

Joseph Passanise  
Attorney, Springfield

**Jefferson City - December 15, 1999**

Dan Viets  
Attorney, Columbia

Leonard Barry  
Private Citizen

**APPENDIX B**  
**ARTICLE IX, MISSOURI CONSTITUTION**

**Section 7.** All real estate, loans, and investments now belonging to the various county and township school funds, except those invested as hereinafter provided, shall be liquidated without extension of time, and the proceeds thereof and the money on hand now belonging to said school funds of the several counties and the city of St. Louis, shall be reinvested in registered bonds of the United States, or in bonds of the state or in approved bonds of any city or school district thereof, or in bonds or other securities the payment of which are fully guaranteed by the United States, and sacredly preserved as a county school fund. Any county or the city of St. Louis by a majority vote of the qualified electors voting thereon may elect to distribute annually to its schools the proceeds of the liquidated school fund, at the time and in the manner prescribed by law. All interest accruing from investment of the county school fund, the clear proceeds of all penalties, forfeitures and fines collected hereafter for any breach of the penal laws of the state, the net proceeds from the sale of estrays, and all other moneys coming into said funds shall be distributed annually to the schools of the several counties according to law.

**CRIMINAL ACTIVITY FORFEITURE ACT**

**513.600.** Sections 513.600 to 513.645 shall be known and may be cited as the "Criminal Activity Forfeiture Act".

**513.605.** As used in sections 513.600 to 513.645, unless the context clearly indicates otherwise, the following terms mean:

(1) (a) "Beneficial interest":

- a. The interest of a person as a beneficiary under any other trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or
- b. The interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person;

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located;

(2) "Civil proceeding", any civil suit commenced by an investigative agency under any provision of sections 513.600 to 513.645;

(3) "Criminal activity" is the commission, attempted commission, conspiracy to commit, or the solicitation, coercion or intimidation of another person to commit any crime which is chargeable by indictment or information under the following Missouri laws:

- (a) Chapter 195, RSMo, relating to drug regulations;
- (b) Chapter 565, RSMo, relating to offenses against the person;
- (c) Chapter 566, RSMo, relating to sexual offenses;

- (d) Chapter 568, RSMo, relating to offenses against the family;
- (e) Chapter 569, RSMo, relating to robbery, arson, burglary and related offenses;
- (f) Chapter 570, RSMo, relating to stealing and related offenses;
- (g) Chapter 567, RSMo, relating to prostitution;
- (h) Chapter 573, RSMo, relating to pornography and related offenses;
- (i) Chapter 574, RSMo, relating to offenses against public order;
- (j) Chapter 575, RSMo, relating to offenses against the administration of justice;
- (k) Chapter 491, RSMo, relating to witnesses;
- (l) Chapter 572, RSMo, relating to gambling;
- (m) Chapter 311, RSMo, but relating only to felony violations of this chapter committed by persons not duly licensed by the supervisor of liquor control;
- (n) Chapter 571, RSMo, relating to weapons offenses;
- (o) Chapter 409, RSMo, relating to regulation of securities;
- (p) Chapter 301, RSMo, relating to registration and licensing of motor vehicles;
- (4) "Criminal proceeding", any criminal prosecution commenced by an investigative agency under any criminal law of this state;
- (5) "Investigative agency", the attorney general's office, or the office of any prosecuting attorney or circuit attorney;
- (6) "Pecuniary value":
  - (a) Anything of value in the form of money, a negotiable instrument, a commercial interest, or anything else the primary significance of which is economic advantage; or
  - (b) Any other property or service that has a value in excess of one hundred dollars;
- (7) "Real property", any estate or legal or equitable interest in land situated in this state or any interest in such real property, including, but not limited to, any lease or deed of trust upon such real property;
- (8) (a) "Trustee":
  - a. Any person who holds legal or record title to real property for which any other person has a beneficial interest; or
  - b. Any successor trustee or trustees to any of the foregoing persons;
- (b) "Trustee" does not include the following:
  - a. Any person appointed or acting as a personal representative under chapter 475, RSMo, or under chapter 473, RSMo;
  - b. Any person appointed or acting as a trustee of any testamentary trust or as trustee of any indenture of trust under which any bonds are or are to be issued.

**513.607.** 1. All property of every kind used or intended for use in the course of, derived from, or realized through criminal activity is subject to civil forfeiture. Civil forfeiture shall be had by a civil procedure known as a CAFA forfeiture proceeding.

2. A CAFA forfeiture proceeding shall be governed by the Missouri rules of court, rules of civil procedure, except to the extent that special rules of procedure are stated herein.

3. In cases where the property is abandoned or unclaimed, an in rem CAFA forfeiture proceeding may be instituted by petition by the prosecuting attorney of the county in which the property is located or seized by the attorney general's office. The proceeding may be commenced

before or after seizure of the property.

4. In lieu of, or in addition to, an in rem proceeding under subsection 3 of this section, the prosecuting attorney or attorney general may bring an in personam action for the forfeiture of property, which may be commenced by petition before or after the seizure of property.

5. (1) If the petition is filed before seizure, it shall state what property is sought to be forfeited, that the property is within the jurisdiction of the court, the grounds for forfeiture, and the names of all persons known to have or claim an interest in the property. The court shall determine ex parte whether there is reasonable cause to believe that the property is subject to forfeiture and that notice to those persons having or claiming an interest in the property prior to seizure would cause the loss or destruction of the property. If the court finds that reasonable cause does not exist to believe the property is subject to forfeiture, it shall dismiss the proceeding. If the court finds that reasonable cause does exist to believe the property is subject to forfeiture but there is not reasonable cause to believe that prior notice would result in loss or destruction, it shall order service on all persons known to have or claim an interest in the property prior to a further hearing on whether a writ of seizure should issue. If the court finds that there is reasonable cause to believe that the property is subject to forfeiture and to believe that prior notice would cause loss or destruction, it shall without any further hearing or notice issue a writ of seizure directing the sheriff of the county or other authorized law enforcement agency where the property is found to seize it.

(2) Seizure may be effected by a law enforcement officer authorized to enforce the criminal laws of this state prior to the filing of the petition and without a writ of seizure if the seizure is incident to a lawful arrest, search, or inspection and the officer has probable cause to believe the property is subject to forfeiture and will be lost or destroyed if not seized. Within four days of the date of seizure, such seizure shall be reported by said officer to the prosecuting attorney of the county in which the seizure is effected or the attorney general; and if in the opinion of the prosecuting attorney or attorney general forfeiture is warranted, the prosecuting attorney or attorney general shall, within ten days after receiving notice of seizure, file a petition for forfeiture. The petition shall state, in addition to the information required in subdivision (1) of this subsection, the date and place of seizure. The burden of proof will be on the investigative agency to prove all allegations contained in the petition.

6. After the petition is filed or the seizure effected, whichever is later, every person known to have or claim an interest in the property shall be served, if not previously served, with a copy of the petition and a notice of seizure in the manner provided by the Missouri rules of court and rules of civil procedure. Service by publication may be ordered upon any party whose whereabouts cannot be determined or if there be unknown parties.

7. The prosecuting attorney or attorney general to whom the seizure is reported shall report annually by January thirty-first for the previous calendar year all seizures. Such report shall include the date, time, and place of seizure, the property seized, the estimated value of the property seized, the person or persons from whom the property was seized, the criminal charges filed, and the disposition of the seizure, forfeiture and criminal actions. The report shall be made to the director of the Missouri department of public safety and shall be considered an open record.

**513.610.** 1. Any person claiming an interest in the property may become a party to the action at any time prior to judgment, whether named in the petition or not. Any party claiming a valid interest in the property shall upon motion be allowed by the court to take possession of the property upon posting bond with good and sufficient security in the amount of the property's value conditioned to pay the value of any interest in the property found to be subject to forfeiture or the value of any interest of another not subject to forfeiture. Such a party taking possession shall not remove the property from the jurisdiction of the court except pursuant to court order.

2. The court may, upon such terms and conditions as prescribed by it, order that the property be sold by an innocent party who holds a lien on or security interest in the property at any time during the proceedings. Any proceeds from such sale over and above the amount necessary to satisfy the lien or security interest shall be paid into court pending final judgment in the forfeiture proceeding. No such sale shall be ordered, however, unless the obligation upon which the lien or security interest is based is in default.

3. Pending final judgment in the forfeiture proceeding, the court may make any other disposition of the property as may be provided by the laws of this state which is in the interest of justice.

**513.612.** Any party may bring one motion to dismiss at any time and such motion shall be heard and ruled on within ten days. Any party may demand a jury trial.

**513.615.** The interest of an innocent party in the property shall not be subject to forfeiture. An "innocent party" is one who did not have actual knowledge that the property was used or intended for use in the course of, derived from or realized through a criminal activity. Any innocent party shall have a right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state or the county has in the same property or proceeds. To enforce such a claim, the innocent party must intervene in the forfeiture proceeding prior to its final disposition; except that, with respect to any property for which the state maintains records of ownership, if the certificate of title, the official records or other evidence of ownership indicates the existence of a lien on the seized property or the ownership of the property by someone other than the defendant, the named lienholder or owner shall be a necessary party to the action commenced under this section unless the party has by affidavit released the lien. The lienholder or owner shall have no obligation to intervene to protect his rights, but the court shall determine the validity of the lien.

**513.617.** 1. In the event criminal charges arising from the same activity giving rise to the CAFA proceeding are filed against any individual claiming an interest in the property subject to the CAFA proceeding, such CAFA proceeding shall be stayed by the court until the disposition of the criminal charges. In such cases, no property shall be forfeited unless the person charged is found guilty of or pleads guilty to a felony offense substantially related to the forfeiture. The property of persons arrested, detained or apprehended and not subsequently charged is not subject to forfeiture for that arrest, detention or apprehension. The rights of an innocent owner of property are superior to any right or claim of the state or county, and such rights shall be enforced pursuant to the provisions of sections 513.610 to 513.620.

2. In any case where the court determines that seized property is subject to forfeiture pursuant to the provisions of section 513.607 but there has not been a felony conviction, finding of guilt or plea of guilt to support such forfeiture, the court shall stay the civil forfeiture proceedings and order the release of the property subject to the following requirements:

(1) The person to whom the property is released shall file a bond in an amount which the court determines to be adequate to secure the property and which does not exceed the value of the property;

(2) The court may impose other conditions that it deems reasonable and necessary to prevent the property from being made unavailable for disposition by the court;

(3) The bond and other conditions shall terminate at such time as the released property is no longer subject to forfeiture or upon return of the property to the confiscating authority.

3. No action filed pursuant to sections 513.600 to 513.660 shall be compromised or otherwise settled without the express approval of the terms of the settlement by the court in which such action is pending. Nothing in this section shall prohibit or prevent the parties from contemporaneously resolving criminal charges and a CAFA proceeding arising from the same activity. However, seized property shall not be used in bargaining to defer prosecution of criminal charges, obtain a guilty plea or affect sentencing recommendations, and the court in which the CAFA proceeding is pending shall not approve any settlement without first making such a finding. No state or local government agency, nor any person, may accept any monetary payment or other thing of value in exchange for the release of property seized for forfeiture or for the settlement of any criminal charges.

4. No state or local government agency may hold property seized for forfeiture unless a petition for forfeiture has been filed within the time limit provided by section 513.607, unless a time extension is granted by order of the circuit court. The court may extend the time for filing a petition for up to ten days for each order, but may not extend the time for filing for more than thirty days.

**513.620.** Subject to the requirement of protecting the interest of all innocent parties, the court may after judgment of forfeiture make any of the following orders for disposition of the property:

(1) Destruction of contraband, the possession of which is illegal;

(2) Retention of the property by any innocent party having an interest therein, upon payment or approval of a plan for payment into court of the value of any forfeited interest in the property; such a plan may include, in the case of an innocent party who holds a lien on or security interest in the property, the sale of the property by said innocent party under such terms and conditions as may be prescribed by the court and the payment into court of any proceeds from such sale over and above the amount necessary to satisfy the lien or security interest;

(3) Judicial sale of the property;

(4) Transfer of the property to any innocent party having an interest therein equal to or greater than the value of the property; or

(5) Any other disposition of the property as may be provided by the laws of this state which is in the interest of justice and adequately protects innocent parties.

**513.623.** The clear proceeds of any sale or disposition after satisfaction of the interest of any innocent party and after payment of the reasonable costs of the CAFA proceeding, including reasonable storage costs as assessed by the court, if any, shall be distributed pursuant to section 7 of article IX of the Constitution of the state of Missouri.

**513.625.** 1. Upon the entry of a final judgment of forfeiture in favor of the state, the title of the state to the forfeited property shall:

(1) In the case of real property or beneficial interest, relate back to the date of filing of the CAFA lien notice in the official records of the county where the real property or beneficial trust is located and, if no CAFA lien notice is filed, then to the date of the filing of any notice of lis pendens under section 527.260, RSMo, in the official records of the county where the real property or beneficial interest is located and, if no CAFA lien notice or notice of lis pendens is so filed, then to the date of recording of the final judgment of forfeiture in the official records of the county where the real property or beneficial interest is located; and

(2) In the case of personal property, relate back to the date the personal property was seized by the investigating agency.

2. If property subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a CAFA lien notice or after the filing of a forfeiture petition, whichever is earlier, the investigative agency may, on behalf of the state, institute an action in the appropriate circuit court against the person named in the CAFA lien notice or the defendant in the civil proceeding and the court shall enter final judgment against the person named in the CAFA lien notice or the defendant in the civil proceeding in an amount equal to the fair market value of the property, together with investigative costs and attorney's fees incurred by the investigative agency in the action. If a civil proceeding is pending, such action shall be filed only in the court where such civil proceeding is pending.

**513.630.** Notwithstanding any other provision of law, a proceeding under this act\* may be commenced up until five years after the conduct terminates or the cause of action accrues. If a criminal prosecution or civil action is brought by the state relating to conduct which would constitute criminal activity as defined in section 513.605, then the running of the period of limitations shall be suspended during the pendency of such prosecution or action by the state and for five years thereafter.

**513.635.** The application of one civil remedy under any provision of this act\* shall not preclude the application of any other remedy. Remedies under this act\* are supplemental and not mutually exclusive.

**513.637.** 1. Notwithstanding any other provision of law, a valid judgment rendered by a court of a jurisdiction having a law substantially similar to sections 513.600 to 513.645 will be recognized and enforced by the courts of this state to the extent that a judgment rendered by a court of this state pursuant to sections 513.600 to 513.645 would be enforced in such other jurisdiction.

2. The attorney general is hereby authorized to enter into reciprocal agreements with the



attorney general or chief prosecuting attorney of any jurisdiction having a law substantially similar to sections 513.600 to 513.645 so as to further the purposes of sections 513.600 to 513.645.

**513.640.** 1. Upon the institution of a civil forfeiture proceeding or, if no civil suit has been instituted, upon the return of an indictment or filing of an information of a crime which may constitute criminal activity as defined in section 513.605, the investigative agency then or at any time during the pendency of the proceeding may file in the official records of any one or more counties a CAFA lien notice. No filing fee or other charge shall be required as a condition for filing the CAFA lien notice. The recorder of deeds shall, upon the presentation of a CAFA lien notice, immediately record it in the official records.

2. The CAFA lien notice shall be signed by the attorney general or his designee or by a prosecuting or circuit attorney or his designee. The notice shall be in such form as the attorney general prescribes and shall set forth the following information:

(1) The name of the person against whom the civil proceeding has been brought. The investigative agency may also name in the CAFA lien notice any other aliases, names, or fictitious names under which the person may be known. The investigative agency may also name in the CAFA lien notice any corporation, partnership, or other entity that is either controlled by or entirely owned by the person;

(2) If known to the investigative agency, the present residence and business addresses of the person named in the CAFA lien notice and of the other names set forth in the CAFA lien notice;

(3) A reference to the civil proceeding stating that a proceeding under this act\* has been brought against the person named in the CAFA lien notice, the name of the county or counties where the proceeding has been brought, and, if known to the investigative agency at the time of filing the CAFA lien notice, the case number of the proceeding;

(4) A statement that the notice is being filed pursuant to this act\*; and

(5) The name and address of the investigative agency filing the CAFA lien notice and the name of the individual signing the CAFA lien notice.

3. A CAFA lien notice shall apply only to one person and, to the extent applicable, any aliases, fictitious names, or other names, including names of corporations, partnerships, or other entities. A separate CAFA lien notice shall be filed for any other person against whom the investigative agency desires to file a CAFA lien notice under this section.

4. The investigative agency shall, as soon as practicable after the filing of each CAFA lien notice, furnish to the person named in the notice either a copy of the recorded notice or a copy of the notice with a notation thereon of the county or counties in which the notice has been recorded. The failure of the investigative agency to so furnish a copy of the notice under this subsection shall not invalidate or otherwise affect the notice.

5. The filing of a CAFA lien notice creates, from the time of its filing, a lien in favor of the state on the following property of the person named in the notice and against any other names set forth in the notice:

(1) Any real property situated in the county where the notice is filed then or thereafter owned by the person; and

(2) Any beneficial interest situated in the county where the notice is filed then or thereafter owned by the person.

6. The lien shall commence and attach as of the time of filing of the CAFA lien notice and shall continue thereafter until expiration, termination, or release. The lien created in favor of the state shall be superior and prior to the interest of any other person in the real property or beneficial interest if the interest is acquired subsequent to the filing of the notice.

7. In conjunction with any civil proceeding:

(1) The investigative agency may file without prior court order in any county a lis pendens and, in such case, any person acquiring an interest in the subject real property or beneficial interest subsequent to the filing of lis pendens shall take the interest subject to the civil proceeding and any subsequent judgment of forfeiture; and

(2) If a CAFA lien notice has been filed, the investigative agency may name as defendants, in addition to the person named in the notice, any persons acquiring an interest in the real property or beneficial interest subsequent to the filing of the notice. If a judgment of forfeiture is entered in the proceeding in favor of the state, the interest of any person in the property that was acquired subsequent to the filing of the notice shall be subject to the notice and judgment of forfeiture.

8. (1) A trustee who acquires actual knowledge that a CAFA lien notice or a civil proceeding under sections 513.600 to 513.645 has been filed against any person for whom he holds legal or record title to real property shall immediately furnish to the investigative agency the following:

(a) The name and address of the beneficiary against whose interest the CAFA lien notice or the CAFA proceeding has been filed, as known to the trustee;

(b) The name and address, as known to the trustee, of all other persons for whose benefit the trustee holds title to the real property; and

(c) A copy of the trust agreement or other instrument pursuant to which the trustee holds legal or record title to the real property;

(2) Any trustee who fails to comply with the provisions of this subsection is guilty of a class C misdemeanor.

9. Any trustee who conveys title to real property for which a CAFA lien notice has been filed at the time of the conveyance in the county where the real property is situated naming a person who, to the actual knowledge of the trustee, holds a beneficial interest in the trust shall be liable to the state for the greater of:

(1) The amount of proceeds received directly by the person named in the CAFA lien notice as a result of the conveyance;

(2) The amount of proceeds received by the trustee as a result of the conveyance and distributed to the person named in the CAFA lien notice; or

(3) The fair market value of the interest of the person named in the CAFA lien notice in the real property so conveyed; however, if the trustee conveys the real property and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the direction of the beneficiary or his designee, the trustee's liability shall not exceed the amount of the proceeds so held for so long as the proceeds are held by the trustee.

10. The filing of a CAFA lien notice shall not constitute a lien on the record title to real

property as owned by the trustee except to the extent the trustee is named in the CAFA lien notice. The investigative agency may bring a civil proceeding in any circuit court against the trustee to recover from the trustee the amounts set forth in subsection 9 of this section, and the state shall also be entitled to recover investigative costs and attorney's fees incurred by the investigative agency.

11. The filing of a CAFA lien notice shall not affect the use to which real property or a beneficial interest owned by the person named in the CAFA lien notice may be put or the right of the person to receive any avails, rents, or other proceeds resulting from the use and ownership, but not the sale, of the property until a judgment of forfeiture is entered.

12. (1) The provisions of this section shall not apply to any conveyance by a trustee pursuant to a court order unless such court order is entered in an action between the trustee and the beneficiary;

(2) Unless the trustee has actual knowledge that a person owning a beneficial interest in the trust is named in a CAFA lien notice or is otherwise a defendant in a civil proceeding, the provisions of this section shall not apply to:

(a) Any conveyance by a trustee required under the terms of any trust agreement, which trust agreement is a matter of public record prior to the filing of any CAFA lien notice; or

(b) Any conveyance by a trustee to all of the persons who own a beneficial interest in the trust.

13. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons.

**513.645.** 1. The term of a CAFA lien notice shall be for a period of six months from the date of filing of the petition. Said lien notice may be renewed by the investigative agency one time prior to judgment. After judgment in favor of the investigative agency the CAFA lien notice shall be for a period of six years. The investigative agency shall be entitled to only one renewal of the CAFA lien notice after judgment.

2. The investigative agency filing the CAFA lien notice may release in whole or in part any CAFA lien notice or may release any specific real property or beneficial interest from the CAFA lien notice upon such terms and conditions as it may determine. Any release of a CAFA lien notice executed by the investigative agency may be filed in the official records of any county. No charge or fee shall be imposed for the filing of any release of a CAFA lien notice.

3. If no civil proceeding has been instituted by the investigative agency seeking a forfeiture of any property owned by the person named in the CAFA lien notice, the acquittal in the criminal proceeding of the person named in the CAFA lien notice or the dismissal of the criminal proceeding shall terminate the CAFA lien notice; and, in such case, the filing of the CAFA lien notice shall have no effect.

4. If no civil proceeding is then pending against the person named in a CAFA lien notice, any person named in a CAFA lien notice may institute an action against the investigative agency filing the notice in the county where the notice has been filed seeking a release or extinguishment of the notice; and, in such case:

(1) The court shall, upon the motion of such person, immediately enter an order setting a date for hearing, which shall be not less than five nor more than ten days after the suit has been

filed. The order, along with a copy of the complaint, shall be served on the investigative agency within three days after the institution of the suit. At the hearing, the court shall take evidence on the issue of whether any real property or beneficial interest owned by such person is covered by the CAFA lien notice or otherwise subject to forfeiture under the Missouri CAFA act. If such person shows by the preponderance of the evidence that the CAFA lien notice is not applicable to him or that any real property or beneficial interest owned by him is not subject to forfeiture under this act\*, the court shall enter a judgment extinguishing the CAFA lien notice or releasing the real property or beneficial interest from the CAFA lien notice;

(2) The court shall immediately enter its order releasing from the CAFA lien notice any specific real property or beneficial interest if a sale of the real property or beneficial interest is pending and the filing of the notice prevents the sale of the property or interest; provided, however, that the proceeds resulting from the sale of the real property or beneficial interest shall be deposited into the registry of the court, subject to the further order of the court; and

(3) At the hearing set forth in subdivision (1) of this subsection, the court may release from the CAFA lien notice any real property or beneficial interest upon the posting by such person of such security as is equal to the value of the real property or beneficial interest owned by such person.

5. In the event a civil proceeding is pending against a person named in a CAFA lien notice, the court, upon motion by said person, may grant the relief set forth herein.

6. Upon acquittal or dismissal of a criminal action against a person also named in a CAFA action, the civil action shall be dismissed.

**513.647.** 1. No state or local law enforcement agency may transfer any property seized by the state or local agency to any federal agency for forfeiture under federal law until the prosecuting attorney and the circuit judge of the county in which the property was seized first review the seizure and approve the transfer to a federal agency. The prosecuting attorney and the circuit judge shall not approve any transfer unless it reasonably appears the activity giving rise to the investigation or seizure involves more than one state or the nature of the investigation or seizure would be better pursued under federal forfeiture statutes. No transfer shall be made to a federal agency unless the violation would be a felony under Missouri law or federal law.

2. Prior to transfer, in an ex parte proceeding, the prosecuting attorney shall file with the court a statement setting forth the facts and circumstances of the event or occurrence which led to the seizure of the property and the parties involved, if known. The court shall certify the filing, and notify by mailing to the last known address of the property owner that his property is subject to being transferred to the federal government and further notify the property owner of his right to file a petition stating legitimate grounds for challenging the transfer. If within ninety-six hours after the filing of the statement by the prosecuting attorney, the property owner by petition shows by a preponderance of the evidence that the property should not be transferred to the federal government for forfeiture, the court shall delay such transfer until a hearing may be held. If the court orders a delay in transfer, no later than ten days after the filing of a petition under this section and sections 513.649 and 513.651, a hearing shall be held unless the court deems, for good cause shown, that a continuance should be granted. At the hearing, if the prosecutor has proved by a preponderance of the evidence that the investigation or seizure involved more than

one state or that the nature of the investigation or seizure would be better pursued under the federal forfeiture statutes, the court shall order that the transfer shall be made.

**513.649.** Any property seized by state or local peace or reserve officers who are detached to, deputized or commissioned by or working in conjunction with the federal agency shall remain subject to the provisions of this section and sections 513.647 and 513.651.

**513.651.** The moneys acquired by law enforcement agencies pursuant to this section and sections 513.647 and 513.649 shall be used only by the law enforcement agency for the investigation or prosecution of criminal activity, the execution of court orders arising from such activity, the enforcement of drug-related crimes, training, drug education, and the safety of both the citizens and law enforcement officers.

**513.653.** Law enforcement agencies involved in using the federal forfeiture system under federal law shall be required at the end of their respective fiscal year to acquire an independent audit of the federal seizures and the proceeds received therefrom and provide this audit to their respective governing body. A copy of such audit shall be provided to the state auditor's office. This audit shall be paid for out of the proceeds of such federal forfeitures.

## **APPENDIX C**

### **UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT**

**447.500.** 1. Sections 447.500 to 447.595 may be cited as the "Uniform Disposition of Unclaimed Property Act".

2. Sections 447.500 to 447.595 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it, except when the words in sections 447.500 to 447.595 do not conform to the uniform laws enacted by other states.

**447.503.** As used in sections 447.500 to 447.595, unless the context otherwise requires, the following terms mean:

(1) "Banking organization", any bank, trust company, or safe deposit company, engaged in business in this state;

(2) "Business association", any corporation, joint stock company, business trust, partnership, limited partnership, or any association for business purposes, or any mutual fund or other similar entity, whether operating in the form of a corporation or a trust, including but not limited to any investment companies registered under the federal Investment Company Act of 1940;

(3) "Engaged in business in this state", any transaction of business within this state sufficient to support personal jurisdiction in the courts of this state;

(4) "Financial organization", any savings and loan association, credit union, or loan and investment company engaged in business in this state;

(5) "Holder", any person in possession of property subject to sections 447.500 to 447.595 belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to sections 447.500 to 447.595;

(6) "Insurance corporation", any association or corporation transacting within this state the business of property insurance or casualty insurance or life insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities;

(7) "Owner", a depositor in case of a deposit, a beneficiary in case of a trust except a trust defined in section 456.500, RSMo, the unclaimed property of which has not escheated pursuant to the provisions of section 456.650, RSMo, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to sections 447.500 to 447.595, or such person's legal representative;

(8) "Person", any individual, business association, government or political subdivision, public corporation, public authority, estate, trust except a trust defined in section 456.500, RSMo, two or more persons having a joint or common interest, or any other legal or commercial entity;

(9) "Reasonable and necessary diligence as is consistent with good business practice", efforts appropriate to and commensurate with the nature and value of the property at issue; however, the holder shall send a notice regarding the unclaimed property via first class mail postage prepaid, marked "Address Correction Requested". Such letter shall be sent by the holder

within twelve months prior to turning the property over to the treasurer. Notwithstanding the provisions of this section, the holder may treat letters sent in the ordinary course of business, first class and "Address Correction Requested" as satisfying the definition of "reasonable and necessary diligence as is consistent with good business practice". The holder may treat notices regarding the unclaimed property as satisfying the "reasonable and necessary standard" for contacting owners. If the postal service provides the holder with additional information as part of the address correction process, the holder shall send second and subsequent notices in the same format as the first notice to any new address provided to the holder;

(10) "Treasurer", the Missouri state treasurer;

(11) "Utility", any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas or who engages in such business in this state.

447.505. The following property held or owing by a banking or financial organization or by a business association is presumed abandoned; provided, however, that neither this section nor any other provision of sections 447.500 to 447.595 shall apply to an instrument issued as an offer to settle a claim when failure to present the instrument for payment may be deemed a refusal of the offer to settle:

(1) Any deposit held in this state with a banking organization, together with any interest or dividend thereon that would be due had the owner not abandoned the account, excluding any charges that may lawfully be withheld, unless the owner has, within seven years or five years as provided in section 447.536:

(a) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(b) Corresponded in writing with, or accepted mail from, the banking organization concerning the deposit; and the term "accepted mail from the banking organization" shall mean the banking organization did send correspondence in writing to the owner by first class mail postage prepaid, marked "Address Correction Requested", and such correspondence was not returned by the post office; or

(c) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization;

(2) Any funds paid in this state toward the purchase of shares or other interest in a financial organization, or any deposit made therewith in this state, and any interest or dividends thereon that would be due had the owner not abandoned the account, excluding any charges that may lawfully be withheld, unless the owner has within seven years or five years as provided in section 447.536:

(a) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(b) Corresponded in writing with, or accepted mail from, the financial organization concerning the funds or deposit; and the term "accepted mail from the financial organization" shall mean the financial organization did send correspondence in writing to the owner by first class mail postage prepaid, marked "Address Correction Requested", and such correspondence was not returned by the post office; or

(c) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization;

(3) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and traveler's checks, that, with the exception of traveler's checks and money orders, has been outstanding for more than seven years or five years as provided in section 447.536 from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks, that has been outstanding for more than fifteen years from the date of its issuance, unless the owner has within seven years or five years as provided in section 447.536, or within fifteen years in the case of traveler's checks, corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association;

(a) No holder may deduct from the amount of any money order any charges imposed by reason of the failure to present those instruments for payment unless there is a valid and enforceable written contract between the issuer and the owner of the property pursuant to which the issuer may impose those charges and the issuer regularly imposes those charges and does not regularly reverse or otherwise cancel those charges with respect to the property. Disclosure of the amount of any such charges shall be deemed adequate if set forth on the money order;

(b) No sum payable on a traveler's check, money order, or similar written instrument (other than a third-party bank check) described in this subdivision may be subjected to the custody of this state as unclaimed property unless:

a. The records of the issuer show that the traveler's check, money order, or similar written instrument was purchased in this state;

b. The issuer has its principal place of business in this state and the records of the issuer do not show the state in which the traveler's check, money order, or similar written instrument was purchased; or

c. The issuer has its principal place of business in this state, the records of the issuer show the state in which the traveler's check, money order, or similar written instrument was purchased and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property;

(4) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than seven years or five years as provided in section 447.536 from the date on which the lease or rental period expired;

(5) Gift certificates, credit memos and credit balances that are redeemable in merchandise only shall be reportable at a rate equal to sixty percent of their respective face value. The state treasurer shall reimburse the owner the full face value.

**447.506.** 1. For the purpose of sections 447.500 to 447.595, a banking organization,



business association, or financial organization may impose charges including prepayment penalties on certificates of deposit, on property subject to sections 447.500 to 447.595 that are lawful when collected, provided such organization or association gives prior constructive or actual notice to their customers that such charges may be imposed.

2. Incorrect computations or other bona fide errors that result in recredited charges to a customer's account that are made despite the holder's standard procedures to the contrary do not establish a pattern of custom or usage for charges on unclaimed property.

**447.510.** 1. Unclaimed funds, as defined in this section, held and owing by an insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

2. "Unclaimed funds", as used in this section, means all moneys held and owing by any insurance corporation unclaimed and unpaid for more than seven years or five years as provided in section 447.536 after the moneys became due and payable as established from the records of the corporation under any property insurance or casualty insurance policy or any life or endowment insurance policy or annuity contract which has matured or terminated, including all unpaid drafts, except drafts issued for the purpose of an offer of settlement. It shall be the responsibility of the issuing company to establish that an unpaid draft was tendered as a settlement offer. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven years or five years as provided in section 447.536:

(1) Assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan; or

(2) Corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

**447.517.** 1. The following funds held or owing by any utility are presumed abandoned:

(1) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years or five years as provided in section 447.536 after the termination of the services for which the deposit or advance payment was made;

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility

entitled thereto for more than seven years or five years as provided in section 447.536 after the date it became payable in accordance with the final determination or order providing for the refund.

2. For purposes of corporations organized pursuant to chapter 274, RSMo, corporations organized pursuant to chapter 357, RSMo, corporations organized pursuant to chapter 394, RSMo, and electric service corporations organized pursuant to chapter 351, RSMo, which have received a loan or loans pursuant to the Rural Electrification Act of 1936, Title VII, U.S. Code as amended, sections 447.500 to 447.595 shall only apply to property and funds which become held or owing and for which the period of time which must expire before such property or funds are presumed abandoned has begun after August 13, 1984.

**447.520.** 1. Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven years or five years as provided in section 447.536 after the date prescribed for payment or delivery, is presumed abandoned if:

(1) It is held or owing by a business association organized pursuant to the laws of or created in this state; or

(2) It is held or owing by a business association doing business in this state, but not organized pursuant to the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

2. Any intangible interest in a business association, as evidenced by the stock records or membership records of the association, is presumed abandoned if:

(1) The interest in the association is owned by a person who for more than seven years or five years as provided in section 447.536 has neither claimed a dividend or other sum nor corresponded in writing with the association or otherwise indicated an interest as evidenced by a memorandum or other record on file with the association; and

(2) The association does not know the location of the owner at the end of such seven-year period or five-year period as provided in section 447.536. With respect to such interest, the business association shall be deemed the holder.

3. Any dividend or other distribution held for or owing to a person at the time the stock or other security to which such dividend or other distribution attaches is considered abandoned at the same time.

**447.527.** All intangible personal property distributable in the course of a dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two years after the date for final distribution, is presumed abandoned, notwithstanding the provisions of section 375.1224, RSMo.

**447.530.** All intangible personal property, and any income or increment thereon that would be due had the owner not abandoned the account, held in a fiduciary capacity for the benefit of another person and including property held by an attorney in fact or an agent, except a

trust defined in section 456.500, RSMo, subject to escheat pursuant to the provisions of sections 456.220 or 456.640 to 456.660, RSMo, is presumed abandoned unless the owner has, within seven years or five years as provided in section 447.536 after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary. If unclaimed property in a trust defined in section 456.500, RSMo, has not escheated within the time periods specified in section 456.640, RSMo, then such property is subject to the provisions of sections 447.500 to 447.595:

- (1) If the property is held by a banking organization or a financial organization, or by a business association organized pursuant to the laws of or created in this state; or
- (2) If it is held by a business association, doing business in this state, but not organized pursuant to the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state; or
- (3) If it is held in this state by any other person; or
- (4) Except any property that is held for the benefit of another whether absolute or contingent where the owner has not reached the age of twenty-one and such property is in a trust or agency account, or is not subject to a trust as permitted by section 456.012 or 456.013, RSMo.

**447.532.** 1. All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven years or five years as provided in section 447.536 is presumed abandoned.

2. All intangible personal property held for the owner whose last known address is located in Missouri, by a public officer, official, agency, department, or court, of the United States or any state or local government or governmental subdivision, agency, or entity thereof that has remained unclaimed by the owner for more than seven years or five years as provided in section 447.536 is presumed abandoned. If no address is listed or if the address is outside this state, all intangible personal property held for the owner by such entities listed in this section and located in this state, or held for a holder that is located in this state, that has remained unclaimed by the owner for more than seven years or five years as provided in section 447.536 is presumed abandoned, except as provided in section 447.547.

3. All intangible personal property referred to in this section is subject to the provisions of sections 447.500 to 447.595.

**447.533.** 1. All intangible property, including but not limited to any interest, dividend, or other earnings thereon that would be due had the owner not abandoned the account, less any lawful charges, held by a business association, federal, state or local government or governmental subdivision, agency or entity, or any other person or entity, regardless of where the holder may be found, if the owner has not claimed or corresponded in writing concerning the property within seven years or five years as provided in section 447.536 after the date prescribed for payment or delivery, is presumed abandoned and subject to the custody of this state as unclaimed property if:

- (1) The last address of the owner is unknown; and

(2) The person or entity originating or issuing the intangible property is this state or any political subdivision of this state, or is incorporated, organized, created or otherwise located in this state.

2. The provisions of subsection 1 of this section shall not apply to property which is or may be presumed abandoned and subject to the custody of this state pursuant to any other provision of law containing a dormancy period different than that prescribed in subsection 1 of this section.

3. The provisions of subsection 1 of this section shall apply to all property held as of August 28, 1990, or at any time thereafter, regardless of when such property became or becomes presumptively abandoned.

4. The provisions of subsection 1 of this section shall not apply to any property held in this state where the holder is a banking organization or financial organization which has a principal place of business in this state.

**447.535.** All intangible personal property, not otherwise covered by sections 447.500 to 447.595, including any income or increment thereon, and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years or five years as provided in section 447.536 after it became payable or distributable is presumed abandoned. Intangible personal property where the property is held in a jurisdiction in which the abandonment presumption is less than seven years or five years as provided in section 447.536 shall be accepted by the state of Missouri.

**447.536.** Except for the abandonment period for travelers checks and money orders provided for in subdivision (3) of section 447.505; the abandonment period for dissolution of business associations, banking organizations and financial organizations as provided for in section 447.527; and the abandonment period for court-related bond proceeds as provided for in section 447.595; all other abandonment periods referenced in sections 447.505 to 447.595, shall change from seven to five years beginning January 1, 2000. The abandonment periods provision of this section shall not apply to property which is held pursuant to any resolution, order or trust indenture entered into prior to August 28, 1998, by a city, county, school district, authority, agency or other political subdivision where the abandonment period or other abandonment provision specified in the resolution, order or trust indenture is different than the abandonment period specified in this section.

**447.537.** If specific property which is subject to the provisions of sections 447.505, 447.520, 447.527, 447.530 and 447.535 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to sections 447.500 to 447.595 if:

- (1) It may be claimed as abandoned or escheated under the laws of such other state; and
- (2) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or

distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state; provided, however, such other state shall only enforce its claim by trial de novo in the appropriate court in Missouri.

447.539. 1. Every person holding funds or other property, tangible or intangible, presumed abandoned pursuant to sections 447.500 to 447.595 shall report to the treasurer with respect to the abandoned property as provided in this section.

2. The report shall be verified by the person filing the report and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of fifty dollars or more presumed abandoned pursuant to sections 447.500 to 447.595;

(2) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under fifty dollars each may be reported in aggregate;

(3) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(4) Other information under the control of the holder which the treasurer prescribes by rule as necessary for the administration of sections 447.500 to 447.595; however, the treasurer shall not request a history of fees and charges on the property in question for information prior to the cutoff date for reporting. Should the case be referred to the attorney general for legal action, the attorney general may examine records that are retained under the authority applicable to the entity's record retention law.

3. If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his or her name while holding the property, the person shall file with his or her report all prior known names and addresses of each holder of the property.

4. Except for the year ending June 30, 1984, the report shall be filed before November first of each year as of June thirtieth next preceding, but the report of life insurance corporations shall be filed before May first of each year as of December thirty-first next preceding. The report for the year ending June 30, 1984, may be combined with the report for the year ending June 30, 1985, and may be included in the report due on November 1, 1985. The treasurer may extend the reporting deadline for periods of thirty days upon written request by any person required to file a report.

5. If the holder of property presumed abandoned pursuant to sections 447.500 to 447.595 knows the whereabouts of the owner, if the owner's claim has not been barred by the statute of limitations, and the property involved is valued at fifty dollars or more, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise such reasonable and necessary diligence as is consistent with good business practice to ascertain the whereabouts of such owner of property valued at fifty dollars or more within one year prior to reporting the property to the state treasurer.

6. Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or corporation, by an officer.

7. If the treasurer determines that the person holding property presumed abandoned

failed to exercise such reasonable and necessary diligence as is consistent with good business practice to ascertain the whereabouts of a property owner, the treasurer may impose a penalty on such holder of up to twenty percent of the value of the property returned to the owner by the treasurer.

8. Any amount (including any penalty) assessed against a holder of property presumed abandoned by the treasurer pursuant to sections 447.500 to 447.595 shall be due and payable to the treasurer thirty days after the holder has received written notice of such assessment, unless the holder has filed a written request for reconsideration by the treasurer. Any amount assessed against a holder upon reconsideration by the treasurer shall be deemed the final decision of the treasurer and shall be due and payable thirty days after the holder has received written notice of such final decision. Any assessment that remains unpaid forty-five days after the holder has received written notice of the final decision by the treasurer shall accrue interest at the rate of one and one-half percent per month, which interest shall be added to and included in the amount due and payable to the treasurer. The treasurer may, for good cause, waive in part, or in whole, any penalty (including interest) assessed against the holder pursuant to sections 447.500 to 447.595. The treasurer is authorized to take the appropriate legal action necessary to collect any unpaid assessment pursuant to sections 447.500 to 447.595. Any penalty imposed and collected by the treasurer pursuant to the provisions of sections 447.500 to 447.595 shall be deposited in the state general revenue fund.

9. The holder shall retain such records necessary to verify the relationship of the owner to the holder for a period of not less than five years subsequent to reporting the property to the treasurer.

10. If a holder has failed to retain records sufficient to allow the treasurer to determine the holder's compliance with sections 447.500 to 447.595, the treasurer shall use estimation techniques, in accordance with generally accepted accounting principles to determine the amount of abandoned property that is reportable for and limited to the most current reportable abandonment period. In cases where multiple states have examined a holder, the treasurer may use reasonable estimation techniques in accordance with generally accepted accounting principles to determine the holder's compliance with sections 447.500 to 447.595, for all reportable periods that were subject to the examination. The amount determined by such methods shall be used as the amount of property presumed abandoned in the holder's report of such property to the treasurer. The holder may contest the estimation techniques used by the treasurer in an appeal de novo to a circuit court of competent jurisdiction.

**447.540.** Entities which are exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code shall report and remit as required by this chapter.

**447.541.** 1. Within two hundred forty days from the due date of the report required by section 447.539, the treasurer shall cause notice to be published at least once each week for two successive weeks in a newspaper of general circulation as defined in section 493.050, RSMo, in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state and the property may be subject to sale or liquidation, the notice shall be published in the county in which the holder of

the abandoned property has his principal place of business within this state.

2. The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property", and shall contain:

(1) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as specified in subsection 1 of this section;

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the treasurer;

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the treasurer's satisfaction within one year from the date of the delivery of the property to the treasurer, the abandoned property will be sold as provided in section 447.558. The treasurer is not required to publish in the notice any items of less than fifty dollars unless, in the aggregate, the items total fifty or more dollars for any one individual. The treasurer shall use reasonable diligence to determine if small items in fact belong to the same individual.

3. Within one hundred twenty days from the receipt of the report required by section 447.539, the treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of fifty dollars or more presumed abandoned under sections 447.500 to 447.595.

4. The mailed notice shall contain:

(1) A statement that, according to a report filed with the treasurer, property is being held by the treasurer to which the addressee appears entitled; and

(2) A statement that, if satisfactory proof of claim is not presented by the owner to the treasurer by the date specified in the published notice, the property will be sold as provided in section 447.558.

5. Subsections 1 and 4 of this section are not applicable to sums payable on traveler's checks or money orders.

6. In addition to the above forms of notice to owners of abandoned property, the treasurer shall work with other state agencies to provide notice to holders of their rights and responsibilities pursuant to sections 447.500 to 447.595 by including information regarding Missouri's unclaimed property laws.

**447.543.** 1. Every person who has filed a report pursuant to section 447.539 shall pay all moneys to the treasurer and deliver to the treasurer all other abandoned property specified in the report at the time of filing the report, provided the holder may retain from any such moneys the reasonable costs of complying with sections 447.500 to 447.595, which costs shall be approved by the treasurer. The treasurer shall approve such costs provided such costs are not unreasonable given the facts and circumstances of each case. The holder may recover the total bona fide costs for compliance with sections 447.500 to 447.595. If the owner establishes his or her right to receive the abandoned property to the satisfaction of the holder before such report is filed, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property as required in this subsection, which will no longer be presumed abandoned, but in lieu thereof shall file a verified written explanation of the proof of claim or of

the error in the presumption of abandonment with the treasurer.

2. The treasurer shall record the name and the last known address of each person appearing from the holders' reports to be entitled to the abandoned funds and cause such funds to be deposited in the special account known as the "Abandoned Fund Account", which is hereby created. The abandoned fund account created by this section shall be the successor account to the abandoned fund account previously in the state treasury and all funds in such accounts on August 13, 1984, shall be transferred to the abandoned fund account created by this section. Records made herein, and open for public inspection pursuant to section 447.560, shall be available for public inspection at all reasonable business hours; except that, the records shall not be subject to public inspection or available for copying, reproduction, or scrutiny by commercial or professional locators of property presumed abandoned who charge any service or finder's fee until ninety days after the names of the people to whom property is owed have been published or officially disclosed. From this account the treasurer shall make prompt payment of claims duly allowed by the treasurer. At any time when the balance of the account exceeds one-twelfth of the previous fiscal year's total disbursement from the abandoned property fund, the treasurer may, and at least once every fiscal year shall, transfer to the general revenue of the state of Missouri the balance of the abandoned fund account which exceeds one-twelfth of the previous fiscal year's total disbursement from the abandoned property fund, and, notwithstanding the provisions of section 33.080, RSMo, to the contrary, no other moneys in the fund shall lapse at the end of the biennium. Should any claims be allowed or refunds ordered which reduce the balance to less than one-twenty-fourth of the previous fiscal year's total disbursement from the abandoned property fund, the treasurer shall transfer from the general funds of the state an amount which is sufficient to restore the balance to one-twelfth of the previous fiscal year's total disbursement from the abandoned property fund.

**447.545.** 1. Upon the payment or delivery of abandoned property, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property pursuant to sections 447.500 to 447.595 is relieved of all liability for any claim which then exists or which thereafter may arise or be made in respect to the property.

2. In the event legal proceedings are instituted against a prior holder in a court of this state, or in any other state or federal court, by any other state claiming to be entitled to unclaimed funds or abandoned property previously paid or delivered to the treasurer, such holder shall give timely written notice to the treasurer and the attorney general of this state of such proceedings, or in the alternative at least ten days before the return date on which an answer or similar pleading is required to be filed. The attorney general may intervene or take such other action as the attorney general deems appropriate or necessary to protect the interests of this state.

3. If the notice provided in subsection 2 of this section is given by the holder and thereafter a judgment is entered against the holder for any amount paid to the treasurer pursuant to the terms of sections 447.500 to 447.595, the treasurer shall, upon being furnished with proof thereof, return to the holder the amount of such judgment, not to exceed the amount of the property reported which is the subject of the dispute.

4. The holder of any interest pursuant to section 447.520 evidenced only by the stock records or membership records of the business association may deliver a duplicate certificate to



the treasurer. Upon such delivery, the holder and any transfer agent, registrar, or other person acting for or on behalf of the holder in executing or delivering such duplicate certificate shall be relieved from all liability of every kind to the person acquiring the original certificate or the duplicate of such certificate issued to the treasurer, not to exceed the liquidated value of the property on the date of delivery, or if unliquidated, the market value of the property on the date of delivery. If the holder elects not to issue and deliver a duplicate certificate, the holder shall transfer title of the underlying shares to the state on the records of the issuing corporation in a manner acceptable to the treasurer.

**447.547.** 1. Sections 447.500 to 447.595 shall not affect property the title to which is vested in a holder by the operation of a statute of limitations prior to August 13, 1984, nor to any property held in a fiduciary capacity that was unclaimed property prior to August 13, 1974. This subsection shall not apply to property the title to which is vested in the holder when the holder is a federal, state, or local government or governmental subdivision, agency, entity, officer, or appointee thereof.

2. Payment and delivery of unclaimed property to the treasurer is not barred by statutes of limitations when title to the property has not vested in the holder prior to August 13, 1984.

3. Sections 447.500 to 447.595 shall not apply to final orders, judgments or decrees of distribution or to abandoned property entered by the probate division of the circuit court after August 13, 1984.

4. Sections 447.500 to 447.595 shall not apply to institutions chartered pursuant to the provisions of an act of the Congress of the United States known as the Farm Credit Act of 1971 and acts amendatory thereto.

5. In addition to other exclusions, sections 447.500 to 447.595 shall not apply to any property that had been unclaimed prior to January 1, 1965, where the holder is a financial organization or banking organization which has a principal place of business in this state.

**447.549.** 1. The expiration of any period of time specified by law during which an action or proceeding may be commenced or enforced to secure payment of a claim for money or recovery of property shall not serve as a defense in any action or proceeding brought by or on behalf of the treasurer against any federal or state government, or agency or entity thereof, for the payment or delivery of any abandoned property to the treasurer pursuant to sections 447.500 to 447.595, or to enforce or to collect any penalty provided by sections 447.500 to 447.595.

2. This section shall apply to all abandoned property held by any federal or state government, or agency or entity thereof, as of August 28, 1990, or any time thereafter, regardless of when such property became or becomes presumptively abandoned.

**447.558.** 1. All abandoned property delivered to the treasurer pursuant to sections 447.500 to 447.595 shall, within two years after the delivery, be sold by the treasurer to the highest bidder at public sale in whatever manner affords in the treasurer's judgment the most favorable market for the property involved. The treasurer may decline the highest bid and reoffer the property for sale if the treasurer considers the price bid insufficient. The treasurer need not offer any property for sale if, in the treasurer's opinion, the probable cost of sale exceeds the

value of the property.

2. Any sale held pursuant to this section, except for the sale of marketable securities, shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale, in a newspaper qualified to publish public notices as provided in chapter 493, RSMo, published in the county, or if no such qualified paper is published in the county, then in a county adjacent to such county, and in the city, town, or village where the property is to be sold if the property is to be sold there.

3. The purchaser at any sale conducted by the treasurer pursuant to sections 447.500 to 447.595 shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The treasurer shall execute all documents necessary to complete the transfer of title.

4. The proceeds from the sale of abandoned property pursuant to this section shall forthwith be deposited in the abandoned funds account.

**447.559.** All abandoned tangible personal property delivered to the treasurer pursuant to subdivision (4) of section 447.505 that has possible historical significance shall be reviewed as follows:

(1) The treasurer at the treasurer's discretion shall screen such property to determine if the property indicates a need for further review;

(2) In the event it is determined that such property needs further review, the treasurer shall make available such property to the state historical society of Missouri for historical review. The state historical society shall issue to the treasurer its report and recommend to the treasurer the appropriate state department or agency to act as custodian of any property deemed to be of such historical significance as to be retained;

(3) The state historical society shall receive a reasonable fee for its services. If the treasurer and the state historical society cannot agree on the amount of the fee, the commissioner of administration shall determine the fee. The fee shall be paid out of appropriations made from the abandoned fund account.

**447.560.** 1. The treasurer shall retain a record of the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned moneys and property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

2. Except as specifically provided by this section, no information furnished to the treasurer in the holder reports, including Social Security numbers or other identifying information, shall be open to public inspection or made public. Any officer, employee or agent of the treasurer who, in violation of the provisions of this section, divulges, discloses or permits the inspection of such information shall be guilty of a misdemeanor.

3. If an amount is turned over to the state that is less than fifty dollars, the amount reported may be made available as public information, along with the name and last known address of the person appearing from the holder report to be entitled to the abandoned moneys;

except that, no additional information other than provided for in this section may be released, and any individual other than the person appearing from the holder report to be entitled to the abandoned moneys shall be governed by sections 447.500 to 447.595 and other applicable Missouri law in his or her use or dissemination of such information.

**447.561.** If the treasurer determines after investigation that any property delivered under the provisions of sections 447.500 to 447.595 has insubstantial commercial value, the treasurer may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against this state or any of its officers or against the holder of any property for or on account of any action taken by the treasurer pursuant to the provisions of this section.

**447.562.** Any person claiming an interest in any moneys or property delivered to the state under sections 447.500 to 447.595 may file a claim to such property or to the proceeds from the sale thereof. The form of the claim shall be prescribed by the treasurer and shall be signed by the claimant and shall contain a statement that it is made under oath or affirmation and that its representations are true, correct and complete to the best knowledge and belief of the claimant, subject to the penalties of making a false affidavit or declaration. Any holder who has paid moneys to the treasurer pursuant to sections 447.500 to 447.595 may make payment to any person appearing to the holder to be entitled thereto, and upon proof of the payment and proof that the payee was entitled thereto, the treasurer shall reimburse the holder for the payment at any time after the moneys or property is delivered to the state, unless the treasurer has already made payment to said person pursuant to a claim filed under the provisions of this section.

**447.565.** 1. The treasurer shall consider any claim filed pursuant to sections 447.500 to 447.595 and may hold a hearing and receive evidence concerning it. If a hearing is held, the treasurer shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by the treasurer and the reasons for the treasurer's decision. The decision shall be a public record.

2. If the claim is allowed, the treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges, and any such claim paid shall include interest, if the owner would have been entitled interest had the property not been presumed to be abandoned. Such interest shall equal the year-to- date annualized average rate of return on all funds invested by the state treasurer for each year of accrual and the previous year's annualized average rate of return for the current fiscal year, but shall not accrue more than seven years after such property has been determined to be abandoned and transferred to the custody of the state.

3. The treasurer\*, after paying a claim, is discharged and released to the same extent as if the treasurer dealt with a legal representative of the owner. The treasurer is not required to see to the application of the payment or to inquire into the truth of any statement made in the claim except to the extent that confirmatory information is provided to the treasurer. Any claimant, attorney in fact, attorney, or anyone representing a claimant to whom payment is made is accountable therefor to any other person having a superior right to the payment.

**447.569.** Any person aggrieved by a decision of the treasurer or as to whose claim the treasurer has failed to act within ninety days after the filing of a claim shall be entitled to a hearing under the provisions of chapter 536, RSMo, and the proceedings instituted by him shall be deemed a contested case under chapter 536, RSMo.

**447.571.** The treasurer, after receiving reports of property deemed abandoned pursuant to sections 447.500 to 447.595, may decline to receive any property reported which the treasurer deems to have a value less than the cost of giving notice and holding sale, or the treasurer may, if the treasurer deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates, but in no event shall the treasurer postpone taking possession for longer than one year. Unless the holder of the property is notified to the contrary within one hundred twenty days after filing the report required pursuant to section 447.539, the treasurer shall be deemed to have elected to receive the custody of the property. Nothing in this chapter shall prevent the treasurer from accepting property prior to the date it becomes unclaimed or abandoned as defined in sections 447.500 to 447.595.

**447.572.** The treasurer may at reasonable times and upon reasonable notice examine the records of any person if the treasurer has reason to believe that such person has failed to report property that should have been reported pursuant to sections 447.500 to 447.595; provided, however, that examination of the records of any person or entity subject to the supervision of the divisions of finance, credit unions, the department of insurance, or the public service commission shall be made by the chief officer of the respective agency at the request of the treasurer. Such examination by the chief officer of the respective agency may be delegated to the chief officer's full-time employees, who otherwise examine the specific listed institution regulated by such agency. Such chief officer of the respective agency shall certify in writing to the treasurer and the institution under examination when the chief officer has reason to believe that such institution has failed to report property that should have been reported pursuant to sections 447.500 to 447.595. In such case the treasurer may examine such institution. The communications between such chief officers and the treasurer concerning this section shall be considered exceptions to any applicable confidentiality statutes. The treasurer may delegate any duty imposed upon the treasurer pursuant to the provisions of sections 447.500 to 447.595 to such other agency employees as the treasurer deems appropriate.

**447.575.** If any person refuses to deliver property to the state as required under sections 447.500 to 447.595, the treasurer shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

**447.577.** 1. Any person who intentionally fails to render any report or perform other duties required pursuant to sections 447.500 to 447.595 may be assessed a penalty of five percent of the total value of the property at issue, but not less than one hundred dollars, for each month the report is not filed or duty not performed, up to twenty-five percent of the total value of the property at issue. Any penalty imposed pursuant to this subsection shall be in lieu of, and not in addition to, other penalties established pursuant to sections 447.500 to 447.595.

2. Any person who intentionally refuses to pay or deliver abandoned property as required pursuant to sections 447.500 to 447.595 may be assessed a penalty of not less than one hundred dollars per day, not to exceed a maximum of ten thousand dollars, and shall be guilty of a class A misdemeanor.

3. Any person who intentionally makes a false statement in any report required pursuant to sections 447.500 to 447.595 may be fined not less than one hundred dollars nor more than ten thousand dollars and shall be guilty of a class B misdemeanor.

**447.579.** The treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of sections 447.500 to 447.595.

**447.581.** 1. No agreement entered into after a report is filed is valid if any person undertakes thereby to locate or reveal the whereabouts of property included in that report for a fee or compensation, unless the agreement discloses the nature and value of the property, is in writing, duly signed and acknowledged by the property owner.

2. Any agreement to pay compensation to recover or assist in the recovery of property reported or delivered to the treasurer under the provisions of sections 447.500 to 447.595 which is made within twelve months after the date of payment or delivery to the treasurer is unenforceable. Any agreement to pay compensation to recover or assist in the recovery of property reported or delivered to the treasurer which is made more than twelve months, but less than twenty-four months, after the date of payment or delivery to the treasurer shall be invalid if the compensation for recovery is greater than ten percent of the property at issue. Any agreement to pay compensation to recover or assist in the recovery of property reported or delivered to the treasurer which is made more than twenty-four months, but less than thirty-six months, after the date of payment or delivery to the treasurer shall be invalid if the compensation for recovery is greater than fifteen percent of the property at issue. Any agreement to pay compensation to recover or assist in the recovery of property reported or delivered to the treasurer which is made more than thirty-six months after the date of payment or delivery to the treasurer shall be invalid if the compensation for recovery is greater than twenty percent of the property at issue.

3. Except as provided in subsection 7 of this section, any person who enters into an agreement to recover or perform in a representative capacity to assist in the recovery of property reported or delivered to the treasurer under sections 447.500 to 447.595, for compensation, shall register with the treasurer prior to submitting a claim to the treasurer for recovery of such property. Any claim filed by a person acting in a representative capacity for the recovery of property reported or delivered to the treasurer under sections 447.500 to 447.595, for compensation, shall be invalid unless the person is registered with the treasurer in accordance with this section. Every person who registers with the treasurer in accordance with this section shall certify compliance and good standing with the tax, business registration and other regulatory requirements of the state of Missouri. To remain registered a person must annually recertify compliance with such requirements.

4. The treasurer may require such additional information from persons wishing to register in accordance with the provisions of this section as the treasurer reasonably believes to be necessary to protect the rightful owners of property presumed abandoned and the citizens of

the state of Missouri, generally.

5. If the treasurer receives information, directly or indirectly, which gives the treasurer reason to believe that a person registered in accordance with the provisions of this section to recover or perform in a representative capacity to assist in the recovery of property reported or delivered to the treasurer, for compensation, has violated the provisions of sections 447.500 to 447.595, or any other provision of law, the treasurer may suspend the registration of such person. In such a case, the treasurer shall notify the person in writing of the grounds for the proposed suspension of registration and provide the person an opportunity to respond to the allegations in writing or, upon request, through a hearing conducted in accordance with the provisions of chapter 536, RSMo. For good cause shown, the treasurer may refrain from acting on any claim filed by such a person pending determination of the appropriateness of suspending such a person's registration. Suspension of a person's registration by the treasurer shall not be a prerequisite nor a substitute for any other civil or criminal causes of action to which such person may otherwise be subject, but is in addition to such possible remedies. Any information obtained or compiled by the treasurer in determining whether to register or suspend such a person's registration may be disclosed to appropriate law enforcement agencies, in any investigation, action or proceeding, civil, criminal or mixed, brought by a governmental agency to enforce the laws of this state, and except for the treasurer's office work product, upon court order in any action or proceeding where such information is material to an issue in the action or proceeding.

6. Any person whose registration has been suspended or which has lapsed pursuant to this section may thereafter seek to reregister in accordance with the provisions of this section.

7. Subsection 1 of this section shall not apply to any agreement made by any person, including personal representatives, guardians, trustee, and others in a representative capacity, with another to discover property in which such person has an interest for a fixed fee or hourly or daily rate, not contingent upon the discovery of property or the value of property discovered; provided, however, that any agreement entered into under this subsection for the purpose of evading the provisions of subsection 1 of this section shall be invalid and unenforceable.

8. Nothing in this section shall be construed to prevent an owner from asserting, at any time, that any agreement to locate or reveal the whereabouts of properties is based on an excessive or unjust consideration.

**447.583.** 1. The treasurer may enter into reciprocal agreements with other states to provide information needed to determine what abandoned property such states may be entitled to escheat if such other states or officials thereof agree to provide this state with information needed to enable this state to determine what abandoned property it may be entitled to escheat.

2. At the request of another state, the attorney general of this state may bring an action in the name of the other state, in any court of appropriate jurisdiction within this state, to enforce the abandoned property laws of the other state against a holder in this state of property subject to escheat by the other state if:

(1) The courts of the other state cannot obtain jurisdiction over the holder;

(2) The other state has agreed to bring actions in the name of this state at the request of the attorney general of this state to enforce the provisions of sections 447.500 to 447.595 against any person in the other state believed by the treasurer to hold property subject to escheat under

the provisions of sections 447.500 to 447.595 when the courts of this state cannot obtain jurisdiction over such person;

(3) The other state has agreed to pay reasonable costs incurred by the attorney general in bringing the action; and

(4) The other state's laws do not require the holder to a greater duty than that provided in sections 447.500 to 447.595.

447.584. The treasurer, with the approval of the governor, may enter into agreements with any person, firm or corporation to assist in the identification, collection, and processing of abandoned property held by any business entity domiciled and located in another state. The treasurer may agree to pay a fee for such services based in whole or in part on a percentage of the value of any property received pursuant to such agreements. Any expenses paid pursuant to this section may not be deducted from the amount subject to claim by the owner under sections 447.500 to 447.595.

**447.585.** 1. At any time after property has been paid for or delivered to the state under the provisions of sections 447.500 to 447.595, another state is entitled to recover the property if:

(1) The last known address of the apparent owner of the property appearing on the records of the holder is in such other state and, under the laws of that state, the property has escheated to that state;

(2) The property is the sum payable on a traveler's check, money order, or other similar instrument that escheated to this state and the traveler's check, money order, or other similar instrument was in fact purchased in such other state, and, under the laws of that state, the property escheated to that state; or

(3) The property is funds held or owing by a life insurance corporation that escheated to this state pursuant to sections 447.500 to 447.595, the last known address of the person entitled to the funds was in fact in such other state, and, under the laws of that state, the property escheated to that state.

2. The claim of another state to recover escheated property under the provisions of this section shall be presented in writing to the treasurer, who shall treat the claim as if it were filed under section 447.562.

**447.587.** 1. Notwithstanding any law to the contrary, including sections 447.500 to 447.595, a banking organization as defined in section 447.503 may retain any fees and charges, including enforcing possessory liens for such fees and charges permitted by safe deposit law or the banking organization's safe deposit box contract, when the contents of the safe deposit box becomes unclaimed property.

2. Notwithstanding any law to the contrary, including sections 447.500 to 447.595, a financial organization as defined in section 447.503 may retain any fees and charges, including enforcing possessory liens for such fees and charges permitted by safe deposit law or the financial organization's safe deposit box contract, when the contents of the safe deposit box becomes unclaimed property.

3. Notwithstanding any law to the contrary, including sections 447.500 to 447.595, a business association as defined in section 447.503 may retain any fees and charges, including

enforcing possessory liens for such fees and charges permitted by safe deposit law or the business association's safe deposit box contract, when the contents of the safe deposit box becomes unclaimed property.

**447.595.** Where a person or party is required by the terms of an arrest warrant or of his probation to post a cash bond or cash probation bond or a civil cash bond ordered by the court, the court shall return the bond, less any outstanding court costs, to such person or party upon the termination of the court proceedings or probation period. If such person or party does not claim the bond proceeds within one year of the date of final court action or termination of his probation period, the court shall transfer the cash bond or cash probation bond to the treasurer for disposition pursuant to sections 447.500 to 447.595.



**APPENDIX D**  
**DISPOSITION OF UNCLAIMED SEIZED PROPERTY**

**542.301.** 1. Unless the statute authorizing seizure provides otherwise, property which comes into the custody of an officer or of a court as the result of any seizure and which has not been returned to the claimant shall be disposed of as follows:

(1) Stolen property, or property acquired in any other manner declared an offense by chapters 569 and 570, RSMo, but not including any of the property referred to in subsection 2 of this section, shall be delivered by order of court upon claim having been made and established, to the person who is entitled to possession;

(2) The claim shall be made by written motion filed with the court with which a motion to suppress has been, or may be, filed. The claim shall be barred if not made within one year from the date of the seizure;

(3) Upon the filing of such motion, the judge shall order notice to be given to all persons interested in the property, including other claimants and the person from whose possession the property was seized, of the time, place and nature of the hearing to be held on the motion. The notice shall be given in a manner reasonably calculated to reach the attention of all interested persons. Notice may be given to unknown persons and to persons whose address is unknown by publication in a newspaper of general circulation in the county. No property shall be delivered to any claimant unless all interested persons have been given a reasonable opportunity to appear and to be heard;

(4) After a hearing, the judge shall order the property delivered to the person or persons entitled to possession, if any. The judge may direct that delivery of property required as evidence in a criminal proceeding shall be postponed until the need no longer exists;

(5) A law enforcement officer having custody of seized property may, at any time that seized property has ceased to be useful as evidence, request that the prosecuting attorney of the county in which property was seized file a motion with the court of such county for the disposition of the seized property. If the prosecuting attorney does not file such motion within sixty days of the request by the law enforcement officer having custody of the seized property, then such officer may request that the attorney general file a written motion with the circuit court of the county or judicial district in which the seizure occurred. Upon filing of the motion, the court shall issue an order directing the disposition of the property. If the property is not claimed within one year from the date of the seizure or if no one establishes a right to it, and the seized property has ceased to be useful as evidence, the judge authorized to order a delivery shall upon the judge's own motion, order a public sale of the property. The proceeds of the sale, less necessary expenses of preservation and sale, shall be paid into the county treasury for the use of the county. If the property is not salable, the judge may order its destruction;

(6) If the property is a living animal or is perishable, the judge may, at any time, order it sold at public sale. The proceeds shall be held in lieu of the property. A written description of the property sold shall be filed with the judge making the order of sale so that the claimant may identify the property. If the proceeds are not claimed within the time limited for the claim of the

property, the proceeds shall be paid into the county treasury. If the property is not salable, the judge may order its destruction.

2. Weapons, tools, devices, and substances other than motor vehicles, aircraft or watercraft, used by the owner or with the owner's consent as a means for committing felonies other than the offense of possessing burglary tools in violation of section 569.180, RSMo, and property, the possession of which is an offense under the laws of this state or which has been used by the owner, or used with the owner's acquiescence or consent, as a raw material or as an instrument to manufacture or produce anything the possession of which is an offense under the laws of this state, or which any statute authorizes or directs to be seized, other than lawfully possessed weapons seized by an officer incident to an arrest, shall be forfeited to the state of Missouri.

3. The officer who has custody of the property shall inform the prosecuting attorney of the fact of seizure and of the nature of the property. The prosecuting attorney shall thereupon file a written motion with the court with which the motion to suppress has been, or may be, filed praying for an order directing the forfeiture of the property. If the prosecuting attorney of a county in which property is seized fails to file a motion with the court for the disposition of the seized property within sixty days of the request by a law enforcement officer, the officer having custody of the seized property may request the attorney general to file a written motion with the circuit court of the county or judicial district in which the seizure occurred. Upon filing of the motion, the court shall issue an order directing the disposition of the property. The signed motion shall be returned to the requesting agency. A motion may also be filed by any person claiming the right to possession of the property praying that the court declare the property not subject to forfeiture and order it delivered to the moving party.

4. Upon the filing of a motion either by the prosecuting attorney or by a claimant, the judge shall order notice to be given to all persons interested in the property, including the person out of whose possession the property was seized and any lienors, of the time, place and nature of the hearing to be held on the motion. The notice shall be given in a manner reasonably calculated to reach the attention of all interested persons. Notice may be given to unknown persons and to persons of unknown address by publication in a newspaper of general circulation in the county. Every interested person shall be given a reasonable opportunity to appear and to be heard as to the nature of the person's claim to the property and upon the issue of whether or not it is subject to forfeiture.

5. If the evidence is clear and convincing that the property in issue is in fact of a kind subject to forfeiture under this subsection, the judge shall declare it forfeited and order its destruction or sale. The judge shall direct that the destruction or sale of property needed as evidence in a criminal proceeding shall be postponed until this need no longer exists.

6. If the forfeited property can be put to a lawful use, it may be ordered sold after any alterations which are necessary to adapt it to a lawful use have been made. If there is a holder of a bona fide lien against property which has been used as a means for committing an offense or which has been used as a raw material or as an instrument to manufacture or produce anything which is an offense to possess, who establishes that the use was without the lienholder's acquiescence or consent, the proceeds, less necessary expenses of preservation and sale, shall be paid to the lienholder to the amount of the lienholder's lien. The remaining amount shall be paid

into the county treasury.

7. If the property is perishable the judge may order it sold at a public sale or destroyed, as may be appropriate, prior to a hearing. The proceeds of a sale, less necessary expenses of preservation and sale, shall be held in lieu of the property.

8. When a warrant has been issued to search for and seize allegedly obscene matter for forfeiture to the state, after an adversary hearing, the judge, upon return of the warrant with the matter seized, shall give notice of the fact to the prosecuting attorney of the county in which the matter was seized and the dealer, exhibitor or displayer and shall conduct further adversary proceedings to determine whether the matter is subject to forfeiture. If the evidence is clear and convincing that the matter is obscene as defined by law and it was being held or displayed for sale, exhibition, distribution or circulation to the public, the judge shall declare it to be obscene and forfeited to the state and order its destruction or other disposition; except that, no forfeiture shall be declared without the dealer, distributor or displayer being given a reasonable opportunity to appear in opposition and without the judge having thoroughly examined each item. If the material to be seized is the same as or another copy of matter that has already been determined to be obscene in a criminal proceeding against the dealer, exhibitor, displayer or such person's agent, the determination of obscenity in the criminal proceeding shall constitute clear and convincing evidence that the matter to be forfeited pursuant to this subsection is obscene. Except when the dealer, exhibitor or displayer consents to a longer period, or by such person's actions or pleadings willfully prevents the prompt resolution of the hearing, judgment shall be rendered within ten days of the return of the warrant. If the matter is not found to be obscene or is not found to have been held or displayed for sale, exhibition or distribution to the public, or a judgment is not entered within the time provided for, the matter shall be restored forthwith to the dealer, exhibitor or displayer.

9. If an appeal is taken by the dealer, exhibitor or displayer from an adverse judgment, the case should be assigned for hearing at the earliest practicable date and expedited in every way. Destruction or disposition of a matter declared forfeited shall be postponed until the judgment has become final by exhaustion of appeal, or by expiration of the time for appeal, and until the matter is no longer needed as evidence in a criminal proceeding.

10. A determination of obscenity, pursuant to this subsection, shall not be admissible in any criminal proceeding against any person or corporation for sale or possession of obscene matter; except that dealer, distributor or displayer from which the obscene matter was seized for forfeiture to the state.

11. When allegedly obscene matter or pornographic material for minors has been seized under a search warrant issued pursuant to subsection 2 of section 542.281 and the matter is no longer needed as evidence in a criminal proceeding the prosecuting attorney of the county in which the matter was seized may file a written motion with the circuit court of the county or judicial district in which the seizure occurred praying for an order directing the forfeiture of the matter. Upon filing of the motion, the court shall set a date for a hearing. Written notice of date, time, place and nature of the hearing shall be personally served upon the owner, dealer, exhibitor, displayer or such person's agent. Such notice shall be served no less than five days before the hearing.

12. If the evidence is clear and convincing that the matter is obscene as defined by law,

and that the obscene material was being held or displayed for sale, exhibition, distribution or circulation to the public or that the matter is pornographic for minors and that the pornographic material was being held or displayed for sale, exhibition, distribution or circulation to minors, the judge shall declare it to be obscene or pornographic for minors and forfeited to the state and order its destruction or other disposition. A determination that the matter is obscene in a criminal proceeding as well as a determination that such obscene material was held or displayed for sale, exhibition, distribution or circulation to the public or a determination that the matter is pornographic for minors in a criminal proceeding as well as a determination that such pornographic material was held or displayed for sale, exhibition, distribution or circulation to minors shall be clear and convincing evidence that such material should be forfeited to the state; except that, no forfeiture shall be declared without the dealer, distributor or displayer being given a reasonable opportunity to appear in opposition and without a judge having thoroughly examined each item. A dealer, distributor or displayer shall have had reasonable opportunity to appear in opposition if the matter the prosecutor seeks to destroy is the same matter that formed the basis of a criminal proceeding against the dealer, distributor or displayer where the dealer, distributor or displayer has been charged and found guilty of holding or displaying for sale, exhibiting, distributing or circulating obscene material to the public or pornographic material for minors to minors. If the matter is not found to be obscene, or if obscene material is not found to have been held or displayed for sale, exhibition, distribution or circulation to the public, or if the matter is not found to be pornographic for minors or if pornographic material is not found to have been held or displayed for sale, exhibition, distribution or circulation to minors, the matter shall be restored forthwith to the dealer, exhibitor or displayer.

13. If an appeal is taken by the dealer, exhibitor or displayer from an adverse judgment, the case shall be assigned for hearing at the earliest practicable date and expedited in every way. Destruction or disposition of matter declared forfeited shall be postponed until the judgment has become final by exhaustion of appeal, or by expiration of the time for appeal, and until the matter is no longer needed as evidence in a criminal proceeding.

14. A determination of obscenity shall not be admissible in any criminal proceeding against any person or corporation for sale or possession of obscene matter.

15. An appeal by any party shall be allowed from the judgment of the court as in other civil actions.

**APPENDIX E**  
**MISSOURI EQUITABLE SHARING PAYMENTS**

Department of Justice, Asset Forfeiture Fund Equitable Disbursement Report

The following are the total yearly payments disbursed by marshals in Missouri:

1993 - 6.1 million dollars  
1994 - 5.4 million dollars  
1995 - 4.3 million dollars  
1996 - 4.8 million dollars  
1997 - 6.8 million dollars  
1998 - 5.2 million dollars  
1999 - 8.1 million dollars (9/99)

TOTAL:                    40.7 million dollars

It should be noted that seizures involving multi-state task forces are not included in these figures, and the amounts represent the amount in surplus after outstanding expenses (for example, liens associated with the property seized) have been paid.

Department of the Treasury, Forfeiture Fund Report

The following are payments made to Missouri law enforcement agencies by the Department of the Treasury:

1994 - \$ 79,876.68  
1995 - \$ 116,018.35  
1996 - \$ 417,070.27  
1997 - \$ 429,658.18  
1998 - \$ 45,281.94  
1999 - \$1,346,644.70 (9/99)

TOTAL:                    \$2,434,550.12

**APPENDIX F**  
**CAFA DEPOSITS TO THE MISSOURI  
SCHOOL BUILDING REVOLVING FUND**

Civil forfeitures were first deposited in the Missouri School Building Revolving Fund beginning in August, 1998, pursuant to Section 166.300, RSMo 1998. No money from the fund has been disbursed to date. The following is the balance of the fund since the date CAFA deposits were first included, according to the Department of Elementary and Secondary Education:

August 3, 1998 - September 30, 1999	\$514,714.89
October, 1999	\$850,390.12
November, 1999	\$872,712.15
December, 1999	\$886,319.37
January 11, 2000	\$895,289.37